

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONNIE COLEMAN,

Petitioner,

v.

TERRY ROYAL,¹ et al.,

Respondents.

Case No. 3:19-cv-00172-ART-CSD

**ORDER DENYING
SECOND-AMENDED PETITION
FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2254**

[ECF No. 36]

Counseled Petitioner Ronnie Coleman, who is incarcerated in the custody of the Nevada Department of Corrections, petitions for a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 36.) This matter is before this Court for adjudication of the merits of the remaining grounds² in Coleman's Second-Amended Petition, which alleges that his trial counsel was ineffective, the jury instructions were flawed, and the trial court improperly precluded his cross-examination of witnesses. (ECF No. 36.) For the reasons discussed below, this Court denies the Second-Amended Petition and a certificate of appealability.

I. BACKGROUND

A. Factual background³

Salvador Murillo testified that he was gambling at a slot machine at the Diamonds Casino in Reno, Nevada on the night of July 7, 2007, when he met a

¹The state corrections department's inmate locator page states that Coleman is incarcerated at Ely State Prison. Terry Royal is the current warden for that facility. At the end of this order, this court directs the clerk to substitute Terry Royal as a respondent for Respondent William Gittere. See Fed. R. Civ. P. 25(d).

²This Court previously dismissed grounds 4(b) and 5. (ECF No. 86.)

³This Court makes no credibility findings or other factual findings regarding the truth or falsity of the evidence from the state court. This Court's summary is merely a backdrop to its consideration of the issues presented in the case.

1 woman named Rosie. (ECF No. 42-27 at 46–48.) After chatting for a little while,
2 Rosie “said if [Murillo] g[a]ve her \$80[,] she would go have sex with [him].” (*Id.* at
3 51.) Murillo agreed to pay \$60, and Rosie said “[t]hat she would be waiting outside
4 in the parking lot.” (*Id.* at 52.) After he finished gambling, Murillo met Rosie in
5 the parking lot, they got into his truck, and Murillo drove to a bank “[t]o withdraw
6 the money so that [he] could pay her.” (*Id.* at 54–55.) Murillo then drove and
7 parked his truck in a secluded area, and he and Rosie exited the truck and sat
8 on the truck’s tailgate. (*Id.* at 58.) After a short time, a man, later identified as
9 Coleman, appeared, pointed a gun at Murillo, and told Murillo that he was
10 robbing him. (*Id.* at 59.) Coleman hit Murillo in the face, took his wallet, and
11 ordered him to take off his boots and belt. (*Id.* at 62–65.) When Coleman tried to
12 tie Murillo’s hands with the belt, Murillo ran barefoot to a nearby trailer park,
13 and after finding a man to help him, he called the police. (*Id.* at 66.)

14 Rosie Davis testified that she was dating Coleman in July of 2007, and that
15 they decided to visit Reno from Sacramento to gamble and to rob someone. (ECF
16 No. 42-28 at 72–75.) Their “plan was [she] was supposed to act like [she] was
17 going to turn a date like a prostitute and that [Coleman] was going to rob the
18 guy.” (*Id.* at 75–76.) Davis met Murillo at the casino and decided he would be a
19 good target for a robbery. (*Id.* at 84.) Later, after Coleman arrived to rob Murillo
20 in the secluded area, Davis ran to Coleman’s car nearby. (*Id.* at 105.) As Davis
21 was sitting in the car waiting for Coleman, a police officer pulled up and “told
22 [her] to get out of there.” (*Id.* at 107.) Davis drove a little way, did a U-turn, drove
23 back to the area, and, after seeing Murillo running from the robbery and the
24 police officer responding, she drove back to her motel and then back to
25 Sacramento.⁴ (*Id.* at 108–112.)

26 ⁴Davis originally told the police that she “was turning a date and that the guy
27 turned on [her] and he had a gun and that [Coleman] tried to save [her].” (ECF
28 No. 42-28 at 114.) Davis admitted this was a lie when she testified at the trial.
(*Id.*) Davis was charged as an accomplice to the robbery.

1 Officer Alan Weaver testified that he was the officer who encountered Davis
2 in Coleman's car and told her that "she needed to leave." (ECF No. 42-30 at 88,
3 101.) Officer Weaver parked his patrol car, and "[a]s [he] was sitting there trying
4 to get the computer to work . . . , [he] noticed this guy walk out from this corner
5 of the building." (*Id.* at 108.) The man, later identified as Coleman, "was wearing
6 a very heavy winter type parka jacket that was long, over the waistband area[,
7 a]nd he had his hands pushed into the pockets of the jacket as he walked by."
8 (*Id.* at 109.) Officer Weaver testified that when Coleman "walked past the front of
9 [his] car, [Coleman] made no attempt to look at [Officer Weaver]," explaining that
10 Coleman simply "walked past ignoring the fact that there was a police car sitting
11 in the parking lot with the lights on." (*Id.* at 110.) Officer Weaver followed Coleman
12 in his patrol car and turned on his spotlight. (*Id.* at 111.) Officer Weaver then
13 asked Coleman to talk to him for a minute, and Coleman, who appeared agitated
14 and had his hands in his pockets, turned around, walked back towards Officer
15 Weaver, and stated that he had not done anything wrong. (*Id.* at 113–115.) Officer
16 Weaver told Coleman three times to take his hands out of his pockets, and
17 because Coleman did not comply, Officer Weaver "unsnapped [his] sidearm, drew
18 it and held it by [his] leg." (*Id.* at 115.)

19 At this point in their encounter, "Coleman [was] at the front of [the] police
20 car," and Officer Weaver was "standing in the doorway to the car with the door
21 positioned between" them. (*Id.*) Officer Weaver then "walked back to the back of
22 the police car," and because Coleman "was still refusing to take his hands out of
23 his pockets and was still . . . advancing on" Officer Weaver, Officer Weaver pointed
24 his firearm at Coleman. (*Id.* at 119.) Officer Weaver "notified dispatch that [he]
25 had the guy at gunpoint and no sooner did [he] do that than [Coleman] ran away
26 from [him]." (*Id.* at 121.) Officer Weaver pursued Coleman because "[h]e wasn't
27 displaying normal behavior and [he] thought he was someone [he] needed to find
28 out what was going on." (*Id.* at 123.) Coleman "ke[pt] his right hand in his jacket

1 pocket as he ran.” (*Id.* at 124.) When Coleman reached the corner of a nearby
2 building, “he pulled his right hand out of his pocket and had a black
3 semiautomatic pistol in his hand and pointed the pistol at” Officer Weaver. (*Id.* at
4 125.) Officer Weaver then fired his weapon seven times. (*Id.* at 128, 139.) Coleman
5 was shot twice: once in the left knee and once in the upper left thigh. (ECF No.
6 42-36 at 173–74.)

7 **B. Procedural background**

8 The jury found Coleman guilty of robbery with the use of a deadly weapon
9 and assault with a deadly weapon, but the jury found Coleman not guilty of
10 resisting, obstructing, or delaying a public officer with a dangerous weapon. (ECF
11 No. 43-1.) Coleman was sentenced to an aggregate of 14 to 36 years in prison.
12 (ECF No. 43-17.) Coleman appealed his judgment of conviction, and the Nevada
13 Supreme Court affirmed. (ECF No. 44-1 at 2.) Coleman sought state post-
14 conviction relief, but the state court denied his petition. (ECF No. 45-1.) The
15 Nevada Court of Appeals reversed the denial and remanded the matter to the
16 state court to “consider whether appointment of new post-conviction counsel or
17 some other remedy is necessary.” (ECF No. 45-17.) Following the remand, the
18 state court again denied Coleman’s petition. (ECF No. 46-3.) The Nevada Court of
19 Appeals affirmed the denial. (ECF No. 46-19.)

20 Coleman transmitted his *pro se* federal habeas corpus petition on or about
21 March 18, 2019. (ECF No. 5.) This Court appointed counsel for Coleman, and
22 counsel filed First- and Second-Amended Petitions. (ECF Nos. 9, 23, 36.)
23 Respondents moved to dismiss Coleman’s Second-Amended Petition, but this
24 Court granted Coleman’s motion to strike the motion to dismiss. (ECF No. 64.)
25 Respondents then filed a new motion to dismiss. (ECF No. 69.) This Court granted
26 the motion, in part, finding that grounds 4(b) and 5 were unexhausted. (ECF No.
27 81.) Coleman moved to voluntarily dismiss his unexhausted grounds, so this
28 Court dismissed grounds 4(b) and 5. (ECF No. 86.) Respondents answered the

1 remaining grounds in Coleman’s Second-Amended Petition on March 23, 2023,
 2 and Coleman replied on April 12, 2024. (ECF Nos. 93, 109.)

3 **II. GOVERNING STANDARDS OF REVIEW**

4 28 U.S.C. § 2254(d) sets forth the standard of review generally applicable
 5 in habeas corpus cases under AEDPA:

6 An application for a writ of habeas corpus on behalf of a person in
 7 custody pursuant to the judgment of a State court shall not be
 8 granted with respect to any claim that was adjudicated on the merits
 in State court proceedings unless the adjudication of the claim –

- 9 (1) resulted in a decision that was contrary to, or
 involved an unreasonable application of, clearly
 10 established Federal law, as determined by the
 Supreme Court of the United States; or
- 11 (2) resulted in a decision that was based on an
 unreasonable determination of the facts in light of the
 12 evidence presented in the State court proceeding.

13 A state court decision is contrary to clearly established Supreme Court
 14 precedent, within the meaning of 28 U.S.C. § 2254, “if the state court applies a
 15 rule that contradicts the governing law set forth in [the Supreme Court’s] cases”
 16 or “if the state court confronts a set of facts that are materially indistinguishable
 17 from a decision of [the Supreme] Court.” *Lockyer v. Andrade*, 538 U.S. 63, 73
 18 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000), and citing *Bell*
 19 *v. Cone*, 535 U.S. 685, 694 (2002)). A state court decision is an unreasonable
 20 application of clearly established Supreme Court precedent within the meaning
 21 of 28 U.S.C. § 2254(d) “if the state court identifies the correct governing legal
 22 principle from [the Supreme] Court’s decisions but unreasonably applies that
 23 principle to the facts of the prisoner’s case.” *Id.* at 75 (quoting *Williams*, 529 U.S.
 24 at 413). “The ‘unreasonable application’ clause requires the state court decision
 25 to be more than incorrect or erroneous. The state court’s application of clearly
 26 established law must be objectively unreasonable.” *Id.* (quoting *Williams*, 529
 27 U.S. at 409–10) (internal citation omitted).

28 The Supreme Court has instructed that “[a] state court’s determination that

1 a claim lacks merit precludes federal habeas relief so long as ‘fairminded jurists
2 could disagree’ on the correctness of the state court’s decision.” *Harrington v.*
3 *Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652,
4 664 (2004)). The Supreme Court has stated “that even a strong case for relief does
5 not mean the state court’s contrary conclusion was unreasonable.” *Id.* at 102
6 (citing *Lockyer*, 538 U.S. at 75); *see also Cullen v. Pinholster*, 563 U.S. 170, 181
7 (2011) (describing the standard as a “difficult to meet” and “highly deferential
8 standard for evaluating state-court rulings, which demands that state-court
9 decisions be given the benefit of the doubt” (internal quotation marks and
10 citations omitted)).

11 **III. DISCUSSION**

12 **A. Ground 1—ineffective assistance of counsel**

13 In ground 1, Coleman alleges that he was denied the effective assistance of
14 trial counsel as guaranteed by the Sixth and Fourteenth Amendments. (ECF No.
15 36 at 11.)

16 **1. Standard for ineffective assistance of counsel claims**

17 In *Strickland v. Washington*, the Supreme Court propounded a two-prong
18 test for analysis of claims of ineffective assistance of counsel requiring the
19 petitioner to demonstrate (1) that the attorney’s “representation fell below an
20 objective standard of reasonableness,” and (2) that the attorney’s deficient
21 performance prejudiced the defendant such that “there is a reasonable
22 probability that, but for counsel’s unprofessional errors, the result of the
23 proceeding would have been different.” 466 U.S. 668, 688, 694 (1984). A court
24 considering a claim of ineffective assistance of counsel must apply a “strong
25 presumption that counsel’s conduct falls within the wide range of reasonable
26 professional assistance.” *Id.* at 689. The petitioner’s burden is to show “that
27 counsel made errors so serious that counsel was not functioning as the ‘counsel’
28 guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. Additionally, to

1 establish prejudice under *Strickland*, it is not enough for the habeas petitioner
2 “to show that the errors had some conceivable effect on the outcome of the
3 proceeding.” *Id.* at 693. Rather, the errors must be “so serious as to deprive the
4 defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687.

5 Where a state court previously adjudicated the claim of ineffective
6 assistance of counsel under *Strickland*, establishing that the decision was
7 unreasonable is especially difficult. *See Richter*, 562 U.S. at 104–05. In *Richter*,
8 the United States Supreme Court clarified that *Strickland* and § 2254(d) are each
9 highly deferential, and when the two apply in tandem, review is doubly so. *Id.* at
10 105; *see also Cheney v. Washington*, 614 F.3d 987, 995 (9th Cir. 2010) (internal
11 quotation marks omitted) (“When a federal court reviews a state court’s *Strickland*
12 determination under AEDPA, both AEDPA and *Strickland*’s deferential standards
13 apply; hence, the Supreme Court’s description of the standard as doubly
14 deferential.”). The Supreme Court further clarified that, “[w]hen § 2254(d) applies,
15 the question is not whether counsel’s actions were reasonable. The question is
16 whether there is any reasonable argument that counsel satisfied *Strickland*’s
17 deferential standard.” *Richter*, 562 U.S. at 105.

18 **2. Ground 1(a)—motion to sever the charges.**

19 In ground 1(a), Coleman alleges that his original trial counsel failed to file
20 a motion to sever the charges related to Murillo from those related to Officer
21 Weaver, filing instead a motion to join the charges. (ECF No. 36 at 12.)

22 **a. Background information**

23 On July 16, 2007, in case number CR07-2132, the prosecution filed a
24 criminal complaint in the state justice court, charging Coleman with robbery with
25 the use of a deadly weapon, assault with a deadly weapon, resisting and/or
26 obstructing and/or delaying a public officer with a dangerous weapon, and being
27 an ex-felon in possession of a firearm. (ECF No. 39-1.) Later, on October 17, 2007,
28 the prosecution presented the case to the grand jury and then filed an indictment

1 in a different case, case number CR07-2673, charging Coleman with robbery with
2 the use of a deadly weapon, attempted murder with a deadly weapon, assault
3 with a deadly weapon, resisting and/or obstructing and/or delaying a public
4 officer with a dangerous weapon, being an ex-felon in possession of a firearm,
5 and being an ex-felon in possession of an electronic stun gun. (ECF No. 39-25.)

6 Coleman's original trial counsel moved for joinder of the cases, explaining
7 that "Counts I, III and IV [in case CR07-2673] are identical to the three counts in
8 CR07-2132." (ECF No. 39-30.) At a hearing on the motion, Coleman's original
9 trial counsel explained that the charges in case number CR07-2132 were
10 repeated in case number CR07-2673 and that consolidation of the cases was
11 needed because (1) pre-trial motions in both cases would be redundant and
12 nonsensical and (2) the jail's records incorrectly reflected that Coleman was being
13 charged with nine counts—the six counts from the indictment plus the
14 unnecessarily repeated three counts from the information—meaning his bail
15 amount and classification at the jail were being negatively affected. (ECF Nos. 39-
16 30, 39-37 at 5–6.) The trial court "consolidate[d] the two cases." (ECF No. 39-37
17 at 6.)

18 A year later, and after new trial counsel had been appointed for Coleman,
19 Coleman unsuccessfully moved to withdraw his motion for joinder and for
20 severance of the Murillo charges from the Officer Weaver charges. (ECF Nos. 41-
21 7 at 7, 41-8 at 15.) Approximately six months later, Coleman's counsel filed a
22 "second motion to sever" the "armed robbery [counts] from [the] Weaver counts,"
23 but the motion was again denied. (ECF No. 42-12.) Finally, on the morning of the
24 first day of trial, Coleman's counsel "renew[ed] the motion to sever," in light of the
25 prosecution's dismissal of the attempted murder count. (ECF No. 42-27 at 5.) The
26 trial court again denied the motion. (*See id.* at 6.)

27 **b. State court determination**

28 In affirming Coleman's judgment of conviction, the Nevada Supreme Court

1 held:

2 Coleman argues that he was denied due process because there
3 was no statutory basis for joinder of his robbery-with-a-deadly-
4 weapon and assault-with-a-deadly-weapon charges. We disagree.

5 A decision not to sever is reviewed for an abuse of discretion.
6 *Weber v. State*, 121 Nev. 554, 575, 119 P.3d 107, 121 (2005). NRS
7 173.115 provides that multiple offenses may be charged if the
8 charges are “[b]ased on two or more acts or transactions connected
9 together or constituting parts of a common scheme or plan.” Offenses
10 are “connected together” if evidence of either offense is cross-
11 admissible to prove the other offense. *Weber*, 121 Nev. at 573, 119
12 P.3d at 120. Such evidence is admissible if it is relevant, proven by
13 clear and convincing evidence, and has probative value that
14 substantially outweighs the risk of unfair prejudice. *Id.* Severance is
15 mandated if joinder is unfairly prejudicial. *Weber*, 121 Nev. at 574,
16 119 P.3d at 121. Unfair prejudice exists if joinder is so prejudicial
17 that it outweighs “judicial economy and compels the exercise of the
18 court’s discretion to sever.” *Tabish v. State*, 119 Nev. 293, 304, 72
19 P.3d 584, 591 (2003) (internal citations omitted).

20 The district court considered the Murillo robbery and Weaver
21 assault as two acts. It found that they were connected because the
22 assault was relevant to prove Coleman’s identity in the robbery and
23 the robbery was relevant to explain Coleman’s conduct in the
24 assault. It also agreed with the State that cross-admissibility existed
25 as evidence of flight, as consciousness of guilt, and as corroboration
26 of the victim’s testimony. The district court reasoned that the state
27 would need to explain Coleman’s actions. Finally, the district court
28 concluded that the counts were properly joined because the acts that
constituted each crime were almost a continuing action, and
therefore, the evidence demonstrating each charge was cross-
admissible to prove the other charge. We conclude that the district
court did not abuse its discretion in finding that evidence of the
crimes were connected together.

Coleman also argues that unfair prejudice required severance.
At trial, the State identified Coleman by tying the robbery evidence
to Coleman’s clothing, which was seized by the police after Coleman
was arrested for assaulting Officer Weaver. The State also explained
that Coleman committed the assault because he had committed the
robbery. This is not an impermissible use of propensity evidence. *See*
Fields v. State, 125 Nev. 220 P.3d 709, 713 (2009). Further, Coleman
originally stipulated to the joinder and points to nothing in the record
that demonstrates joinder was so prejudicial as to outweigh judicial
economy. Nevada caselaw has consistently upheld joinder involving
more heinous acts. *See, e.g., Floyd v. State*, 118 Nev. 156, 162-65,
42 P.3d 249, 253-55 (2002) (upholding the joinder of kidnapping and
four counts of sexual assault with a deadly weapon against one
victim, with four counts of first degree murder with a deadly weapon
against four other victims), *abrogated on other grounds by Grey v.*
State, 124 Nev. 110, 113-119, 178 P.3d 154, 160-61 (2008). We
conclude that the district court did not abuse its discretion by failing
to sever the robbery and assault.

[FN2] Coleman also argues that the district court erred
by failing to give a contemporaneous limiting
instruction. Notably, the district court gave an

1 instruction at the close of trial that instructed the jury
2 to decide each offense separately. This instruction was
3 sufficient for purposes of joinder and Coleman offers “no
4 reason to abandon the customary presumption” that the
5 jury followed this instruction. *See Weber*, 121 Nev. at
6 575, 119 P.3d at 121 (concluding that the general
7 instruction at the close of trial was sufficient to inform
8 the jury of its duty to decide each offense separately).

9 (ECF No. 44-1 at 5–7.)

10 In his state habeas petition, Coleman alleged that his trial counsel’s failure
11 to sever the charges amounted to ineffective assistance of counsel. (See ECF No.
12 46-3 at 3.) The state court denied the claim, finding that “the Nevada Supreme
13 Court considered this matter on [direct] appeal, and determined that joinder of
14 the charges did not result in prejudice to the defendant.” (*Id.*) Coleman raised his
15 ineffective-assistance-of-trial-counsel claim in his appeal of the denial of his state
16 habeas petition, but he clarified that he was “only presenting the[] claim[] for
17 purposes of exhaustion.” (ECF No. 46-19 at 6–7.)

18 **c. Analysis**

19 To be sure, severing the charges related to Murillo from the charges related
20 to Officer Weaver would have been beneficial to Coleman at the trial stage.
21 However, Coleman fails to demonstrate that his original trial counsel rendered
22 ineffective assistance of counsel in filing a motion for joinder. First, Coleman’s
23 trial counsel’s motion for joinder did not concern joining the charges related to
24 Murillo with the charges related to Officer Weaver. Rather, Coleman’s trial
25 counsel’s motion for joinder concerned consolidating the two state courts cases—
26 case numbers CR07-2132 and CR07-2673—for procedural purposes because the
27 charges in the latter case subsumed the charges in the former case, making the
28 former case superfluous. Second, it appears that Coleman’s trial counsel had a
sound basis to join the two cases: Coleman’s status at the jail was being
negatively impacted by the inclusion of the three repeated charges from the
information. Third, regarding prejudice, when the trial court granted Coleman’s

original trial counsel’s motion, it noted that it was “not really joining anything,” but rather was just consolidating the case numbers. (ECF No. 39-37 at 6.) As such, even absent Coleman’s trial counsel’s motion, it appears that the trial court would have consolidated the cases. Fourth, also regarding prejudice, Coleman fails to demonstrate that, but for his original trial counsel’s motion for joinder, there is a reasonable probability that the result of his later motions to sever would have been different. Indeed, the joining of the two overlapping cases for foretold procedural reasons and the severing of the charges relating to the robbery of Murillo from the charges relating to Officer Weaver presented different legal issues, demonstrating that there is no clear connection between the motion for joinder and the later motions to sever.

Because the Nevada Supreme Court’s determination constituted an objectively reasonable application of federal law and was not based on an unreasonable determination of the facts, Coleman is denied habeas relief for ground 1(a).

3. Ground 1(b)—motion to suppress evidence.

In ground 1(b), Coleman alleges that his trial counsel failed to move to suppress evidence from his detention on the basis that Officer’s Weaver’s stop was pretextual and based upon his race.⁵ (ECF No. 36 at 13.)

a. Background information

Coleman’s trial counsel moved to suppress “all evidence seized by the unlawful stop and detention of [Coleman] on July 7, 2007, by Officer Weaver,” arguing that Officer Weaver had no legal right to make the stop under *Terry v. Ohio*. (ECF No. 40-20.) A motion to suppress evidentiary hearing was held, and Officer Weaver testified, *inter alia*, that (1) it was approximately 11:30 p.m. when he saw Coleman in an “industrial” portion of Reno where Officer Weaver “ha[d]

⁵Notably, Coleman is black, and Officer Weaver is white.

1 never seen anybody working at” during the night, (2) Coleman “was wearing a
 2 heavy winter type jacket with his hands buried into the pockets” even though it
 3 was July, (3) Coleman’s behavior was concerning due to “the way that he was
 4 walking, not looking at [him],” and (4) Coleman refused to take his hands out of
 5 his jacket pockets. (ECF No. 40-29 at 39–40, 48, 55, 57.) The trial court denied
 6 the motion to suppress, finding, *inter alia*, “that it was appropriate to briefly
 7 detain Mr. Coleman to investigate the possibility of burglary or other criminal
 8 activities” due to (1) the area where Coleman was located, (2) the time of day, (3)
 9 the fact that Coleman ignored Officer Weaver, (4) Coleman’s refusal to listen to
 10 Officer Weaver, (5) Coleman’s placement of his hands in his pockets, and (6)
 11 Coleman’s menacing movements. (*Id.* at 207–08.)

12 Coleman’s trial counsel later filed a second motion to suppress, which
 13 “reache[d] beyond [the] *Terry* issues” discussed in the first motion to suppress
 14 and regarded “the actual seizure of Mr. Coleman, which occurred when Officer
 15 Weaver used excessive, deadly force.” (ECF No. 42-8 at 3.) The trial court denied
 16 the second suppression motion, explaining that Coleman “kept approaching the
 17 police officer at night when he was told to stop and remove his hands and he did
 18 not and the police officer was justified in thinking that, ‘Hey, this guy may have
 19 a weapon.’” (ECF No. 42-19 at 29–30.)

20 **b. State court determination**

21 In affirming the denial of Coleman’s state habeas petition, the Nevada
 22 Court of Appeals held:

23 Coleman argues the district court erred by dismissing his
 24 claim counsel was ineffective for failing to argue Officer Weaver’s
 25 chasing and shooting of Coleman was racially motivated without first
 26 conducting an evidentiary hearing. The district court found that
 27 while this claim was supported by specific facts, the factual
 28 allegations, if true, would not entitle Coleman to relief because
 Officer Weaver had reasonable suspicion to stop Coleman that night.
 Substantial evidence supports the decision of the district court, and
 we conclude Coleman fails to demonstrate the district court erred by
 dismissing this claim without holding an evidentiary hearing.

1 (ECF No. 46-19 at 5.)

2 **c. Analysis**

3 Given Coleman's race, Coleman's trial counsel certainly could have used
4 race as a basis to argue that the initial *Terry* stop by Officer Weaver was
5 pretextual. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968) (holding that a police officer
6 may briefly stop an individual "where [the] police officer observes unusual
7 conduct which leads him reasonably to conclude in light of his experience that
8 criminal activity may be afoot and that the persons with whom he is dealing may
9 be armed and presently dangerous"). However, Coleman fails to demonstrate that
10 such an argument would have been fruitful.

11 As the Nevada Court of Appeals reasonably determined, substantial
12 evidence supported the trial court's determination that Officer Weaver had
13 reasonably objective suspicions to conduct a *Terry* stop of Coleman. Indeed,
14 Coleman fails to demonstrate that the aggregate objective bases for the stop—the
15 time of day, the location, and Coleman's clothing, demeanor, and placement of
16 his hands—were unreasonable. And because "[s]ubjective intentions play no role
17 in ordinary, probable-cause Fourth Amendment analysis," Officer Weaver's
18 alleged racial bias was inconsequential to the trial court's determination on the
19 motion to suppress. *See Whren v. United States*, 517 U.S. 806, 813 (1996)
20 (explaining that Supreme Court "cases foreclose any argument that the
21 constitutional reasonableness of traffic stops depends on the actual motivations
22 of the individual officers involved," and while agreeing "that the Constitution
23 prohibits selective enforcement of the law based on considerations such as race,"
24 clarifying that "the constitutional basis for objecting to intentionally
25 discriminatory application of laws is the Equal Protection Clause, not the Fourth
26 Amendment"); *see also United States v. Taylor*, 60 F.4th 1233 (9th Cir. 2023)
27 ("The officers' subjective motivations, whatever they may have been, could not
28 change the objective reasonableness of their actions.").

1 Because the Nevada Supreme Court's determination constituted an
 2 objectively reasonable application of *Strickland* and was not based on an
 3 unreasonable determination of the facts, Coleman is denied habeas relief for
 4 ground 1(b).

5 **B. Grounds 2 and 4(a)—jury instructions.**

6 In ground 2, Coleman alleges that the trial court denied him due process
 7 by allowing Jury Instruction No. 22, which failed to instruct the jury that they
 8 needed to find that he aimed a firearm at Officer Weaver to meet their burden of
 9 proof under the indictment. (ECF No. 36 at 13.) Relatedly, in ground 4(a),
 10 Coleman alleges that Jury Instruction No. 27 was confusing, misleading, and/or
 11 misstated the law. (*Id.* at 20.) Specifically, in ground 4(a), Coleman alleges that
 12 the instructions did not clearly define “use” of a deadly weapon, explaining that
 13 the jury was not informed whether it could convict him of assault with a deadly
 14 weapon for merely holding a gun while running or whether the prosecution
 15 needed to prove that he brandished or aimed the gun at Officer Weaver. (*Id.*)

16 **1. State court determination**

17 In affirming Coleman's judgment of conviction, the Nevada Supreme Court
 18 held:

19 Coleman argues that the jury should have been instructed that
 20 a conviction for assault with a deadly weapon required a finding that
 21 he pointed a gun at Weaver. He contends that allowing the jury to
 22 convict him of the assault charge based upon evidence that he
 23 displayed a weapon constituted a fatal variance between the
 24 indictment and jury instruction. We disagree.

25 “[F]ailure to clearly object. . . to a jury instruction [generally]
 26 precludes appellate review.” *Green v. State*, 119 Nev. 542, 545, 80
 27 P.3d 93, 95 (2003). Yet discretion exists to address an error that is
 28 plain and affects the defendant's substantial rights. *Id.* An accused
 must be clearly informed as to the charges set forth in the indictment
 so that there is an opportunity to adequately prepare for trial and
 not be surprised by evidence. *Id.* at 74, 605 P.2d at 204. Reversible
 error based on a variance between an indictment and a jury
 instruction exists only if the variance affects substantial rights of the
 accused. *State v. Jones*, 96 Nev. 71, 73-74, 605 P.2d 202, 204 (1980).
 Coleman points to the charging document, which alleged that
 Coleman committed the assault because he aimed a firearm at
 Weaver while attempting to elude the officer, and argues that the jury

1 should have been instructed to determine whether Coleman pointed
his weapon at Weaver. We disagree.

2 Instead, we conclude that Coleman was sufficiently informed
of the nature of the assault charge. Moreover, the State consistently
3 argued that Coleman pulled a handgun on Weaver, the instruction
adequately set forth the elements of assault with a deadly weapon,
4 and the instruction was inconsequential to Coleman's defense that
he did not have a gun. Coleman may be correct that a jury would
5 have acquitted him of the assault charge if the instruction included
aiming or pointing, but assault-with-a-deadly weapon does not
6 require such a finding and the jury could have found Coleman guilty
without finding he aimed or pointed his weapon at Weaver. See NRS
7 200.471. We therefore conclude that Coleman failed to demonstrate
that his substantial rights were affected. As a result, the district
8 court did not abuse its discretion in giving the assault instruction
and no reversible error exists based on any variance between the
9 indictment and the instruction.

10 (ECF No. 44-1 at 7–8.)

11 **2. Standard**

12 Issues relating to jury instructions are not cognizable in federal habeas
corpus unless they violate due process. *Estelle v. McGuire*, 502 U.S. 62, 72 (1991);
13 see also *Gilmore v. Taylor*, 508 U.S. 333, 342 (1993) (“[W]e have never said that
the possibility of a jury misapplying state law gives rise to federal constitutional
14 error.”). The question is “whether the ailing instruction by itself so infected the
entire trial that the resulting conviction violates due process’, . . . not merely
15 whether ‘the instruction is undesirable, erroneous, or even universally
condemned.’” *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977) (quoting *Cupp v.*
16 *Naughten*, 414 U.S. 141, 146–47 (1973)). And significantly, when reviewing a
jury instruction, this Court considers that jury instruction “in the context of the
17 instructions as a whole and the trial record.” *Estelle*, 502 U.S. at 72; see also
18 *United States v. Frega*, 179 F.3d 793, 806 n.16 (9th Cir. 1999) (“In reviewing jury
instructions, the relevant inquiry is whether the instructions as a whole are
19 misleading or inadequate to guide the jury’s deliberation.”).

20 **3. Analysis**

21 This Court first addresses ground 2. In the indictment filed on October 17,
22 2007, Coleman was charged with, *inter alia*, “assault with a deadly weapon, a
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1 violation of NRS 200.471.” (ECF No. 39-25 at 3.) The indictment alleged that
2 Coleman “intentionally place[d] Officer A.J. Weaver . . . in reasonable
3 apprehension of immediate bodily harm, with the use of, or present ability to use,
4 a deadly weapon, to wit: a firearm, in that the defendant *aimed the firearm at the*
5 *officer* while attempting to elude the officer.” (*Id.* (emphasis added).) This language
6 from the indictment was repeated verbatim at the beginning of the jury
7 instructions where Coleman’s charges were listed. (See ECF No. 42-40 at 13.)
8 However, in Jury Instruction No. 22, the jury was instructed as follows on the
9 definition of assault with a deadly weapon: “[t]he crime of assault with a deadly
10 weapon consists of the following elements: (1) [a] person intentionally places
11 another person in reasonable apprehension of immediate bodily harm; (2) [w]ith
12 the present ability to use a deadly weapon.” (*Id.* at 34.) Coleman argues that this
13 jury instruction lessened the prosecution’s burden of proof because rather than
14 having to prove that he aimed the gun at Officer Weaver, as the prosecution
15 alleged in the indictment, this instruction only required the prosecution to prove
16 that he had the ability to use the gun.

17 While this Court acknowledges the variance between the indictment and
18 Jury Instruction No. 22, the Nevada Supreme Court reasonably determined that
19 the trial court did not abuse its discretion in giving Jury Instruction No. 22. As
20 the Nevada Supreme Court reasonably concluded, this instruction adequately set
21 forth the elements of assault with a deadly weapon under Nevada law. Nevada
22 Revised Statute § 200.471(2)(d) provides that “assault is committed upon an
23 officer” when the perpetrator “use[s] a deadly weapon or [has] the present ability
24 to use a deadly weapon.” Therefore, even though Jury Instruction No. 22
25 broadened the scope under which the jury could convict Coleman when
26 compared to prosecution’s original theory of prosecution in the indictment, Jury
27 Instruction No. 22 complied with Nevada law and was not erroneous. Moreover,
28 the indictment listed Nevada Revised Statute § 200.471 (see ECF No. 39-25 at 3),

1 so Coleman was on notice of the statutory elements of the crime with which he
2 was charged. Thus, Coleman fails to demonstrate that Jury Instruction No. 22
3 violated his right to due process.

4 Turning to ground 4(a), Jury Instruction No. 27 provided as follows: “In
5 order to ‘use’ a deadly or dangerous weapon, there need not be conduct which
6 actually produces harm but only conduct which produces a fear of harm or force
7 by means or display of the deadly or dangerous weapon in aiding the commission
8 of the crime.” (ECF No. 42-40 at 39.) And as was discussed previously, the jury
9 was instructed that assault with the use of a deadly weapon consisted of merely
10 “the present ability to use a deadly weapon” in Jury Instruction No. 22. (ECF No.
11 42-40 at 34) As is relevant here, when reading Jury Instruction Nos. 22 and 27
12 in conjunction, it is clear that the prosecution only had to prove, at a minimum,
13 that Coleman had the ability to display a deadly weapon to satisfy the “use”
14 element of the assault charge. Although this Court acknowledges that the word
15 “means” as used in Jury Instruction No. 27 may have been confusing, the word
16 “display,” which is used in the conjunctive with “means,” is not confusing.
17 Further, in comparing Jury Instruction No. 27 with Jury Instruction No. 38,
18 which regarded the resisting, obstructing or delaying a public officer charge, it is
19 clear that “use” of a deadly weapon in the context of the assault charge required
20 something less than “pointing” a deadly weapon. (ECF No. 42-40 at 50.)
21 Consequently, in reviewing Jury Instruction No. 27 in the context of the jury
22 instructions as whole, Coleman fails to demonstrate that Jury Instruction No. 27
23 violated his right to due process.

24 In sum, because the Nevada Supreme Court’s determination constituted
25 an objectively reasonable application of federal law and was not based on an
26 unreasonable determination of the facts, Coleman is denied habeas relief for
27 grounds 2 and 4(a).

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C. Ground 3—trial court limited cross-examination of witnesses.

In ground 3, Coleman alleges that the trial court precluded cross-examination of Murillo and Davis on their potential bias or motive to fabricate in violation of his right to Confrontation as guaranteed by the Sixth and Fourteenth Amendments. (ECF No. 36 at 16.)

1. Background information

The following colloquy took place during Coleman’s trial counsel’s cross-examination of Murillo:

Defense counsel: Did you talk to your wife and tell her when you would be home before you left?

Prosecutor: Objection, your Honor. Relevancy.

Trial Court: Sustained.

Defense counsel: Have you had to explain to your wife why you still had not arrived home by 4:30 in the morning?

Prosecutor: Objection. Relevancy.

Defense counsel: It goes to bias and - -

Trial Court: Sustained.

Defense counsel: Have you told your wife you were the victim of a robbery?

Prosecutor: Objection. Relevancy.

Trial Court: Sustained.

Defense counsel: Have you told your wife that you were up on the top of that hill with a prostitute?

Prosecutor: Objection, relevancy.

Trial Court: Sustained.

Defense counsel: Motive to fabricate the robbery.

Trial Court: Sustained, counsel. Next question.

Defense counsel: Are you still married together with your wife?

Prosecutor: Objection. Relevancy.

Trial Court: Sustained.

Defense counsel: The times that you have had to come to court, have you explained to your wife that it was because of a robbery?

Prosecutor: Objection, your Honor. Objection. Relevancy.

Trial Court: Sustained.

(ECF No. 42-28 at 51–52.)

Later, while cross-examining Davis, Coleman’s trial counsel sought to ask her about her relationship with her attorney:

I want to ask her if she was actually happy with her attorney and the representation that she received or whether or not she was just scared to death that she had him for a lawyer and figured, if she stuck with him and didn’t strike a deal [to testify against Coleman in

1 return for leniency], she was on her way to prison. Because, if she is
2 gripped with that sense of helplessness, that affects the weight and
credibility, your Honor, of what any of us would judge to be, you
know, the believability of what she is saying.

3 (ECF No. 42-28 at 136.) The trial court allowed Davis to be asked why she decided
4 to plead guilty, but it disallowed “specific conversations[] between attorney and
5 client, unless she waives that privilege.” (*Id.* at 137.) Coleman’s trial counsel then
6 sought permission to question Davis about her preliminary hearing to see “what
7 kind of confidence she had in [her attorney] after sitting in court and watching
8 him represent her that day.” (*Id.* at 139–140.) The trial court disallowed that line
9 of questioning because Davis had not waived her attorney/client privilege. (*Id.* at
10 147.)

11 Coleman’s trial counsel asked Davis if her attorney was appointed or
12 retained. (*Id.* at 148.) The prosecutor objected, and Coleman’s trial counsel
13 explained that he wanted to delve into whether she had a choice of who would be
14 representing her. (*Id.* at 148–49.) The trial court sustained the objection. (*Id.* at
15 150.) Later, during a bench conference, regarding this line of questioning,
16 Coleman’s trial counsel stated that “it is relevant that [Davis’s attorney] presented
17 to her as bumbling and incompetent,” implying that the only for Davis to stay out
18 of prison was to please the prosecutors by implicating Coleman. (*Id.* at 154.)

19 Later, Coleman explained that Davis had lied about having \$1,500 in her
20 bank account and about having a job at the time of the robbery. (ECF No. 42-30
21 at 6.) Coleman then explained that he requested that his counsel “pull up the
22 records of her bank account at the time of the incident . . . to test her credibility.”
23 (*Id.*) Coleman’s trial counsel then asked the trial court to issue “a certificate of
24 materiality subpoena duces tecum.” (*Id.* at 10.) The trial court denied the request,
25 finding that Davis’s bank records were not material because people steal money
26 even when they have money. (*Id.* at 11, 13.) However, the trial court explained
27 that “if you want to do it, you have an investigator. Get him on the job.” (*Id.* at 9.)

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2. State court determination

In affirming Coleman's judgment of conviction, the Nevada Supreme Court held:

Coleman argues that the district court abused its discretion by limiting his cross-examination of Murillo and Davis. We disagree.

A district court's evidentiary decisions are generally reviewed for an abuse of discretion, but a potential violation of the Confrontation Clause is a question of law reviewed de novo. *Chavez*, 125 Nev. at , 213 P.3d at 484. During cross-examination, the district court limited Coleman from questioning Murillo about condoms, his marital status and his wife's knowledge of the robbery. Coleman argued that Murillo's thinking about a condom prior to the robbery was relevant to his claim that a man jumped out of the dark with a gun. Coleman also argued that Murillo had a motive to fabricate the robbery and Coleman sought to ask Murillo whether he was still married, whether he had to explain the robbery to his wife, or whether she knew he was with a prostitute. The district court found the questions irrelevant. The condom question is irrelevant and the marital questions are marginally relevant at best.

Coleman also attempted to probe Davis about her confidence in her attorney. The district court allowed Coleman to ask whether Davis was satisfied with her counsel, but not about specific conversations with her counsel because such communications were privileged. Coleman was also precluded from asking whether Davis' attorney was appointed and whether her attorney raised any substantive or procedural issues on her behalf after the State objected based on relevancy. Finally, Coleman was precluded from asking Davis about whether she knew the police and prosecution's theory of the robbery, but an objection was sustained as to speculation. In sum, nothing in the trial transcripts cited by Coleman establish that he was erroneously limited from probing whether Davis perceived her attorney as incompetent, that she felt helpless, or that she knew the state expected her to testify something other than the truth. We conclude that the district court did not abuse its discretion in limiting the cross-examination of Davis or Murillo.

(ECF No. 44-1 at 10–11.)

3. Standard

The Sixth Amendment's Confrontation Clause provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. "[A] primary interest secured by [the Confrontation Clause] is the right of cross-examination." *Douglas v. Alabama*, 380 U.S. 415, 418 (1965); see also *Maryland v. Craig*, 497 U.S. 836, 845 (1990) ("The central concern of the Confrontation Clause is to ensure the

1 reliability of the evidence against a criminal defendant by subjecting it to rigorous
2 testing in the context of an adversary proceeding before the trier of fact.”);
3 *Delaware v. Fensterer*, 474 U.S. 15, 22 (1985) (“[T]he Confrontation Clause is
4 generally satisfied when the defense is given a full and fair opportunity to probe
5 and expose . . . infirmities through cross-examination, thereby calling to the
6 attention of the factfinder the reasons for giving scant weight to the witness’
7 testimony.”); *Davis v. Alaska*, 415 U.S. 308, 316 (1974) (“Cross-examination is
8 the principal means by which the believability of a witness and the truth of his
9 testimony are tested.”). While “the Confrontation Clause guarantees an
10 opportunity for effective cross-examination,” it does not guarantee “cross-
11 examination that is effective in whatever way, and to whatever extent, the defense
12 might wish.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (internal
13 quotation marks omitted); see also *Kentucky v. Stincer*, 482 U.S. 730, 739 (1987)
14 (“[T]he Confrontation Clause’s functional purpose i[s] ensuring a defendant an
15 opportunity for cross-examination.”). “A criminal defendant states a violation of
16 the Confrontation Clause by showing that he was prohibited from engaging in
17 otherwise appropriate cross-examination designed to show a prototypical form of
18 bias on the part of the witness.” *Van Arsdall*, 475 U.S. at 680.

19 Further, “[t]he right of an accused in a criminal trial to due process is, in
20 essence, the right to a fair opportunity to defend against the State’s accusations.”
21 *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); *DePetris v. Kuykendall*, 239
22 F.3d 1057, 1062 (9th Cir. 2001) (“The Supreme Court has made clear that the
23 erroneous exclusion of critical, corroborative defense evidence may violate both
24 the Fifth Amendment due process right to a fair trial and the Sixth Amendment
25 right to present a defense.”). “[T]he Constitution [also] guarantees criminal
26 defendants ‘a meaningful opportunity to present a complete defense.’” *Crane v.*
27 *Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S.
28 479, 485 (1984)).

4. Analysis

The Nevada Supreme Court reasonably determined that the trial court did not erroneously limit Coleman's trial counsel's cross-examination of Murillo or Davis, so Coleman fails to demonstrate that his right to confront Murillo or Davis or his right to defend against the prosecution's accusations were violated. As the Nevada Supreme Court reasonably noted, Coleman's trial counsel's questions to Murillo about his marriage lacked relevancy. Indeed, contrary to Coleman's contention, it is nonsensical that Murillo fabricated the robbery to conceal his interaction with a prostitute from his wife because reporting the robbery only ensured that Murillo's activities at the time of the robbery would come to light.

Turning to Davis, the Nevada Supreme Court reasonably noted that Coleman was not unduly limited from probing Davis. Coleman's trial counsel desired to question Davis about whether her second statement to the police implicating Coleman was truthful or whether Davis was unsatisfied with her attorney's representation and recanted her initial statement to the police merely to pursue a plea deal and avoid having to go to trial with an incompetent attorney. Although the trial court disallowed more penetrating questions that would have violated Davis's attorney/client privilege, the trial court allowed Coleman's trial counsel to ask Davis why she pled guilty and whether she simply told the police what they wanted to hear in recanting her initial statement. These broad questions sufficiently satisfied an examination into Davis's state of mind and potential bias. In fact, due to Davis's response that she told the police the truth during her second statement (see ECF No. 42-28 at 224), more specific questions to attempt to impeach Davis would not have been fruitful. Additionally, it is nonsensical that Davis would have lied in recanting her initial statement and making her second statement because in implicating Coleman under her second statement, Davis cemented her own role in the robbery.

Moreover, regarding Davis's bank account, the trial court did not preclude

1 Coleman's trial counsel from seeking to obtain Davis's bank account record. It
2 merely denied the request for a subpoena to do so given that Coleman's trial
3 counsel had an investigator who could investigate the issue if needed.

4 Accordingly, because Coleman was provided an opportunity for effective
5 cross-examination of Murillo and Davis, the Nevada Supreme Court's
6 determination constituted an objectively reasonable application of federal law and
7 was not based on an unreasonable determination of the facts. Coleman is denied
8 habeas relief for ground 3.

9 **IV. CERTIFICATE OF APPEALABILITY**

10 Rule 11 of the Rules Governing Section 2254 Cases requires this Court to
11 issue or deny a certificate of appealability. *See* 28 U.S.C. § 2253(c); *Turner v.*
12 *Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002). Pursuant to 28 U.S.C. §
13 2253(c)(2), a certificate of appealability may issue only when the petitioner "has
14 made a substantial showing of the denial of a constitutional right." With respect
15 to claims rejected on the merits, a petitioner "must demonstrate that reasonable
16 jurists would find the district court's assessment of the constitutional claims
17 debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot*
18 *v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a certificate
19 of appealability will issue only if reasonable jurists could debate (1) whether the
20 petition states a valid claim of the denial of a constitutional right and (2) whether
21 this Court's procedural ruling was correct. *Id.*

22 Applying these standards, this Court finds that a certificate of appealability
23 is unwarranted.

24 **V. CONCLUSION**

25 It is therefore ordered that the Second-Amended Petition [ECF No. 36] is
26 denied.

27 It is further ordered that a certificate of appealability is denied.

28 It is further ordered that the Clerk of the Court substitute Terry Royal for

1 Respondent William Gittere, enter judgment, and close this case.

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3 Dated this 10th day of January 2025.

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6 ANNE R. TRAUM
7 UNITED STATES DISTRICT JUDGE
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